

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:) Conf. No.: 5968
BREINING, Scott R., et al.)
Examiner: O'DELL, David K.
Serial No.: 10/711,969)
Art Unit: 1625
Filed: October 15, 2004)
Docket No.: T103 1580.1
For: Pharmaceutical Compositions and)
Methods for Relieving Pain and Treating)
Central Nervous System Disorders)

APPLICANTS' COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Examiner O'Dell:

Applicants' take an opportunity to thank Examiner O'Dell for the Supplemental Examiner's Amendment as mailed April 11, 2008.

As noted in MPEP §1302.14, the Examiner's statement of reasons for allowance may be an important source of prosecution file history. As such, Applicants' submit these Comments to the Examiner's Statement of Reasons for Allowance.

For the record, the Examiner's statement is the personal opinion of the examiner. The statement should not create an estoppel. The failure of an applicant to comment on the Examiner's statement should not be treated as acquiescence to the statement. Nevertheless, in this case, Applicants' ardently disagree with the Examiner's notation that "[t]he claims have been amended to represent generic claims that are for the most part enabled."

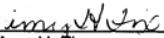
The Examiner's statement is incorrect and a mischaracterization of the present claims and specification. Further, the Examiner's statement is a misstatement of the law. A claim either is or is not enabled. 35 USC §112 does not provide for a claim that is *mostly* enabled. Rather, the requirements of §112 in their entirety must be met by each and every claim. An examiner may not allow a claim if any requisite of §112 is lacking. The present claims meet all

of the requirements of 35 USC §112. No weight should be placed upon the Examiner's statement.

In addition, in the Reasons for Allowance the Examiner provides an opinion of the closest prior art. Again, the Examiner's statement is the personal opinion of the Examiner. This statement should not create any inference or presumption as against the Applicants.

These comments are submitted prior to the payment of the issue fee. No additional fee is believed due. If, however, any fee is due, please consider this as authority to charge Deposit Account No. 09-0528.

Respectfully submitted


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5/19/08

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